IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.141 OF 2007

Geeta Rani
W/o. Chellappan .. Petitioner

Vs.

1. State of Tamil Nadu,
rep. by the Secretary to
Govt., Public Department,
Fort St. George,
Chennai 600 009.

2. Union of India, rep. by
Secretary, Ministry of Finance,
Department of Revenue,
Janpath Bhavan, New Delhi.

3. The Superintendent,
Central Prison, Puzhal,Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus calling for the records of the first respondent in GO.No.SRI/1061-3/2006 dated 20.12.2006 quash the same and direct the respondents to produce the body of the detenu Chellappan Manivannan S/o. Palanisamy Chellappan before this Court, normal resident of Flat D-II Floor 56, Giri Road, T.Nagar, Chennai 17, presently undergoing detention under the provisions of Conservation of Foreign Exchange & Prevention of Smuggling Activities Act in Central Prison, Chennai and set him at liberty.

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For Petitioner : Mr.B. Kumar
Senior Counsel for
Mr.S. Ramachandran

For Respondents 1&3 : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

Respondent-2 : Mr.P. Kumaresan, ACGSC

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O R D E R

P.K. MISRA, J

The wife of the detenu has filed this Habeas Corpus Petition for quashing the order of prevention dated 20.12.2006, which has been passed by the State of Tamil Nadu with a view to prevent the detenu from smuggling of goods in future. Such order has been passed in exercise of power conferred under Section 3(1)(i) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), hereinafter referred to as "the COFEPOSA Act".

2. From the grounds of detention it appears that on 13.11.2006, the detenu after having completed check-in, immigration, customs and security formalities, was within the security lounge area of Anna International Airport, Chennai and was intercepted and questioned by the Intelligence Officer attached to Air Intelligence Unit of the Customs regarding the contents of the detenu's baggage. The detenu stated that he was carrying Rs.4 lakhs of Indian currency. The officer took the detenu and his baggage to the Air Intelligence Unit room and the detenu was questioned in presence of two independent witnesses. The detenu replied that he was carrying Rs.5 lakhs in hand baggage and Rs.2 lakhs in checked-in baggage. Examination of olive green 'Hush Puppies' stroller bag bearing Srilankan Airlines Baggage Tag No.UL278401 resulted in recovery of Rs.9 lakhs of Indian currency. Examination of hand baggage consisting of one black 'Blazer club' zipper bag resulted in recovery of Rs.5,00,000/-. It is further stated in the grounds of detention that the detenu,

> "attempted to smuggle Rupees fourteen lakhs of Indian currency out of India by not declaring that you were in possession of the same before Customs inspite of being facilitated with an export endorsement/certificate for your printer part mentioned above, and also as you subsequently misdeclared the currency in your possession as Rs.7,00,000/- only, and further, as you did not have any permit/exemption from the Reserve Bank of India for the export of the currency, the Indian currency of Rs.14,00,000 attempted to be taken out of the country by you was seized by the said officer under the mahazar in the presence of the two independent witnesses and and in your presence for action under Customs Act 1962 read with Foreign Exchange Management Act, 1999."

On 14.11.2006, the voluntary statement of the detenu was recorded, wherein the detenu inter alia stated that he had proceeded to the security lounge after completing the security formalities and that he was taking old machineries for repair and he would have earned some profit by exchanging foreign currencies.

In the grounds of detention it is further stated :-

> "(iii) You have attempted to smuggle the Indian currencies amounting to Rupees Fourteen Lakhs by way of non-declaration to Customs and subsequently mis-declaration to Customs on enquiry, in violation of Section 77 of the Customs Act, 1962, read with the provisions of the Foreign Exchange Management Act, 1999. You

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have rendered the goods liable to confiscation under the provisions of Section 113(d), and 113(h) of the Customs Act, 1962 read with the Foreign Exchange Management Act, 1999. You have also rendered yourself for penal action under Section 114 of the Customs Act, 1962.

(iv) You were arrested by the Preventing Officer on 14.11.2006 under Section 104 of the Customs Act, 1962 as there was reason to believe that you were guilty of an offence punishable under Section 132 and Section 135 of the Customs Act, 1962 read with FEMA, 1999. You were produced before the Honourable Additional Chief Metropolitan Magistrate, Economic Offences Court, Egmore on 15.11.2006 and you were remanded to judicial custody till 29.11.2006. Your remand was

periodically extended till 13.12.2006 and 22.12.2006.

...

(ix) you had sent a representation dated 17.11.2006 to the Honourable Additional Chief Metropolitan Magistrate (E.O.II), Egmore Court, Chennai with copies to Chief Commissioner of Customs, Custom House, Chennai and others, wherein you had stated inter alia that while completing your checked-in and immigration formalities you approached a Customs Officer for declaration of Indian money; that you were taken to the AIU room and force to sign a dictated statement; that you have not seen the witnesses; that you were detained till 15.11.2006 and that you could not tell your grievances to the Magistrate due to threat. The Joint Commissioner of Customs (AIR), in his reply dated 22.11.2006 and the Addl. Commissioner of Customs (CCO), in his reply dated 28.11.2006 have stated inter alia that the endorsement in the Boarding Pass by the CISF authorities would confirm the fact that you were intercepted only at the Security Lounge Area after the security formalities; that the voluntary statement was given by you in your own handwriting and contained personal and family details, which are only known to you; that your contentions about pre-assigned statement from you are baseless and not based on facts and that your retraction deserves to be rejected. The Joint Commissioner of Customs (AIR), issued a corrigendum to his letter dated 22.11.2006 stating that due to the typographical error, one line in sub para (1) of para 2 line 1 has been left out and hence, in the sub para (1) of para 2 of the said letter may be read as "You were intercepted in the Security Lounge Area of the Departure Hall in 1st floor of the Anna International Airport after completion of your check-in, Immigration, Customs and Security formalities, and were noticed to be very nervous at the Security Lounge Area. ..." The Government have taken into consideration the averments/contentions contained in the representation and the replies given by the sponsoring authority. From the above material, the Government are satisfied that your contentions are baseless, devoid of merit and hence the Government reject the same."

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3. On 14.11.2001, the detenu was arrested and remanded to judicial custody. It was asserted in the Habeas Corpus Petition that the detenu was released on 15.12.2006 and he retracted his statement on 17.12.2006 and thereafter the order of detention was passed on 20.12.2006. Copy of the grounds of detention was served on 23.12.2006. It is stated that on 5.2.2007, a representation was sent on behalf of the detenu asking for certain details including the provision of law for violation of which he was detained. On 17.2.2007, a reply was given without giving the required details.

4. Copy of the representation made by the present petitioner, wife of the detenu, on 5.2.2007 is available on record. In such representation, inter alia it was stated :-

> "(b) Secondly it is mentioned that my husband has not violated Customs Act r/w.FEMA 1999. He is unable to find any provision under FEMA 1999 which any way prohibits taking foreign currencies out of India. Therefore it is requested the exact provisions of FEMA, the Section of FEMA may be intimated to my husband, to enable him t send a proper reply."

5. Regarding the above aspect, a specific ground has been taken in para 12 of the affidavit filed in support of the Habeas Corpus Petition stating that there was no reply to such a request made in the representation. In the counter affidavit filed by the State Government, as reply to the aforesaid contention, it has been stated :-

> "11. As far as the averments made in paragraph 12 of the affidavit are concerned, I submit that goods are liable for confiscation under Section 113(d)(e) and (h) of the Customs Act, 1962. The detenu has violated section 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 which reads "any person resident in India may take outside India currency notes upto an amount not exceeding Rs.5,000/- per person". As per this he has carried the Indian currency against the eligible amount. Further, section 5 of the Foreign Exchange Management (Export and Import of Currency)Regulations, 2000 prohibits export of foreign currency without the general or special permission of Reserve Bank of India. Further the detenu when questioned whether he has any licit documents or approval from Reserve Bank of India for carrying those Indian currencies amounting to Rs.14 lakhs, he failed to produce any licit documents or permit or exemption from the Reserve Bank of India for export of the currency out of India. Thus the contention raised are not acceptable as per law in force."

6. Learned Senior Counsel appearing for the petitioner has submitted that it is apparent from the grounds of detention, particularly paragraph (iv), that the detenu was arrested for the alleged commission of offence punishable under Sections 132 and 135 of the Customs Act, 1962 read with Foreign Exchange Management Act, 1999 (hereinafter referred to as "FEMA"). In spite of specific request being made to furnish details to

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the specific provisions, which have been violated, the State Government, while rejecting the representation, had not furnished any details and for the first time only in the counter affidavit filed in the Habeas Corpus petition, it is disclosed that the goods are liable to confiscation under Section 113(d) and (h) of the Customs Act and the detenu has violated Section 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency)Regulations, 2000 and it is further stated that Section 5 of such Regulations prohibits export of foreign currency without the general or special permission of Reserve Bank of India. According to the Senior Counsel, by not furnishing the specific details required, the detenu has been obviously deprived of an opportunity of making an effective representation at the earliest and moreover the fact that representation was simply rejected without giving the required details indicates that the representation has not been dealt with in a cavalier fashion and not with the seriousness required.

7. In our considered opinion, the contention of the learned Senior Counsel that the detenu has been prejudiced and has been prevented from making an effective representation on account of non-furnishing of specific provision, which had been allegedly violated by the detenu, is acceptable.

8. As a matter of fact, a Division Bench decision of Madras High Court reported in 1990 L.W.Crl.242 (LIYAKAT ALI v. K.L. VERMA, JOINT SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF FINANCE), appears to be applicable in full force to the facts of the present case. Relevant portions of the said decision are extracted hereunder :-

> "3. The main ground urged before us is that the petitioner in his representation dated 30-3-1988, wanted to be enlightened as to what was the section of the Foreign Exchange Regulation Act, which he was found to have violated. The order rejecting his representation viz., order dated 26-4-1988, does not give any reply to his query.
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> 4. Learned counsel for the respondent would contend that the remand report, which was one of the documents furnished to the detenu along with the grounds of detention, mentioned the section as Sec.9(1)(b) of the Act.
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> ...
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> 6. There is some force in the contentions putforth by the learned counsel for the petitioner. No doubt, the detention order would not be made invalid for the mere absence of mention of the section. But, when the detenu has made a specific request to have that section to be made known to him, that request should have been acceded to, and the failure to do so vitiates the order."

9. We are conscious of the juristic principle that ignorance of law is not a valid excuse. However, in the present case, there was a generic reference to the alleged violation of the provisions contained in Sections 132 and 135 of the Customs Act read with FEMA. Specific reply given in the counter is regarding the alleged violation of some of the provisions contained in the Foreign Exchange Management (Export and Import of Currency)Regulations, 2000. Even assuming that lack of reference in

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the grounds of detention to the specific provisions contained in the Regulations now relied upon in the counter for the first time did not have the effect of vitiating the subject satisfaction, it can be at least concluded that by not clarifying the matter by referring to the provisions contained in the Foreign Exchange Management (Export and Import of Currency)Regulations, 2000, (now relied upon in the counter), obviously prejudiced the detenu as he was denied of the opportunity of making an effective representation.

10. It has been laid down in several decisions of the Supreme Court as well as of the Madras High Court including the decisions reported in (2006) 2 M.L.J (Crl.) 487 (KHATHIJA BEEVI v. STATE OF TAMIL NADU AND ANOTHER) , (2006) 2 M.L.J (Crl.) 492 (PEER MOHAMMED v. STATE OF TAMIL NADU AND ANOTHER) and (2006) 2 M.L.J (Crl.) 131 (MOHIADEEN SAHIB, P.M.S. v. STATE OF TAMIL NADU) emphasising the necessity of bestowing serious attention to the contentions or requests made in a representation. When a specific request was made for furnishing the details of the specific provisions which had been violated, it was the duty of the concerned officer at least at that stage to furnish such particulars to enable the detenu to take such further recourse as would be deemed proper by such detenu. The non furnishing of such details or particulars has the effect of vitiating the order of detention.

11. From the grounds of detention it is apparent that detenu was intercepted within the security lounge obviously after other formalities including customs clearance were over. Learned Senior Counsel has therefore contended that endorsement on the Boarding Pass made by the CISF authorities, which would have categorically fortified such conclusion, should have been supplied to the detenu. In this connection, he has specifically invited our attention to paragraph No.4 of the affidavit where it is stated:-

> "4) The Detention order is also violative of Art.22(5) in that, certain important documents, have not been supplied along with the grounds. In the grounds it is mentioned that the detenu had one hand baggage. He cleared the security check with the said hand bag and was in the sterile lounge awarding the boarding. This feature is mentioned in the grounds to show that the detenu deliberately chosen not to disclose the Indian currencies and evade the screening. Any passenger who had handbag with him must screen and have it x-rayed and he himself frisked before he is cleared the goods into the lounge. As a token x-ray and frisking the luggage Tag which will be mandatorily tied into the Hand bag will have to be stamped by the Security personnel. Stamping of luggage Tag with the Hand Bag is the only proof of security clearance for Hand bag. Therefore this Luggage Tag with Security Stamp dt. 13.11.2006 ought to have been supplied along with the grounds. The failure in this regard is violative of Article 22 (5). The Detaining authority if it has not seen and perused this Luggage Tag with the Security Stamp, it would also amount to non-application of mind. In any view, continued detention of the detenu would be unsustainable. This has to be viewed in the context of the plea of the Detenu from the beginning that he was intercepted with before any of the screening and that he did

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declare the Indian currencies and that he did not know that he could not take it with him."

12. In the representation dated 5.2.2007, it was also specifically stated :-

"The grounds proceed on the basis that my husband was intervened after security check and that the Indian currencies were found in the hand baggage which was carried by him. If so, the hand baggage must have a Tag and Tag must have a security stamp. Only with this Security Stamp a person will be able to take the baggage inside the Security Hall where the passengers go before boarding the Aircraft. Such Tag is not supplied is a gross violation. It is necessary to supply the same along with security stamp if any."

13. Such representation was rejected on 17.2.2007, wherein it was observed that all the relied upon documents for passing the detention order had already been supplied. It was further stated in para 3 that as his request for supply of baggage tag along with security stamp was not seized, the question of supplying the same does not arise.

14. In the above context, learned Senior Counsel has specifically invited our attention to the xerox copy of the Boarding Pass available at Page No.22 of the Booklet supplied to the detenu, which does not appear to contain any security endorsement. Even when a specific ground has been taken, the respondents have not been able to produce the original Boarding Pass which could have shown whether there was any endorsement of security clearance on the obverse side of the Boarding Pass or even in the front. It is the specific case of the detaining authority that the detenu was found in the Security lounge after clearing other formalities. In spite of specific assertion in representation and affidavit, non-production of any documentary material to indicate that the person had gone to Security lounge after clearing the security, which could have been best proved by showing the endorsement relating to security clearance in the Boarding Pass, raises a genuine doubt in the mind. At any rate it was the duty of the detaining authority to seek for clarification at that stage and it was also the duty to produce sufficient materials before this Court to dispel such doubt. Similarly, the reply that baggage tag had not been seized is not convincing as it discloses lack of application of mind on the part of the detaining authority to a very vital fact. In this connection, it has to be particularly noticed that in para (ix) of the grounds of detention it was stated:

"The Joint Commissioner of Customs (AIR), in his reply dated 22.11.2006 and the Addl. Commissioner of Customs (CCO), in his reply dated 28.11.2006 have stated inter alia that the endorsement in the Boarding Pass by the CISF authorities would confirm the fact that you were intercepted only at the Security Lounge Area after the security formalities;"

15. This aspect also assumes more significance in view of the specific representation dated 17.11.2006 made by the detenu himself. It has been specifically stated by the detenu that while completing check-in

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and immigration formalities the detenu had approached the Custom Officer for declaration of Indian money and was taken to Air Intelligence Unit room and he was forced to sign in a dictated statement. It is axiomatic that a person can enter into the security lounge only after he was searched by the security personnel. Moreover, when in the reply it was specifically stated that there was endorsement in the Boarding Pass, obviously it was the duty of the detaining authority to furnish materials in support of such contention along with the grounds of detention and particularly when a specific representation had been made. In view of the above, the detention is also liable to be quashed.

16. Learned Senior counsel for the petitioner has also contended that even as per the admitted case of the Department, the detenu had declared that he was carrying Rs.7 lakhs, but in the grounds of detention the Department seems to have proceeded on the assumption that the detenu was carrying Rs.14 lakhs without declaring the same. According to the petitioner, the fact that the detenu had declared Rs.7 lakhs was a vital aspect to which there has been non-application of mind. Since we are of the opinion that the order of detention is liable to be quashed in view of the other vital infirmities already noticed, it is not necessary to delve into this question, though prima facie such contention may appear to be justified. Similarly, it is not necessary to deal with the contention that the grounds of detention appears to be verbatim copy of the mahazar, indicative of non-application of mind.

17. For the aforesaid reasons, the order of detention is set aside and the detenu is set at liberty forthwith unless his presence is required in any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpk

To

1. The Secretary to
   Govt., Public Department,
   Fort St. George, Chennai 600 009.

2. The Secretary, Ministry of Finance,
   Department of Revenue,
   Union of India,
   Janpath Bhavan, New Delhi.

3. The Superintendent,
   Central Prison, Puzhal,Chennai.

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4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
Public (SC) Department,
Fort St.George, Chennai - 9.

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